

ORDINANCE No. 06 110

1st Reading _____
Public Hearing _____
2nd Rdg. and Final Passage _____
Withdrawn _____ Lost _____

Date to Mayor _____
Date Returned _____
Date Resubmitted to Council _____

Approved as to Form and Legality

Factual contents certified by

Said Ordinance was submitted to the legal voters of the City of Jersey City, New Jersey, at the General Election held on November 7, 2006.

AN ORDINANCE AMENDING ORDINANCE 06-14
ENTITLED "ORDINANCE ESTABLISHING A FAIR AND
OPEN PROCESS CONSISTENT WITH THE PROVISIONS OF
N.J.S.A. 19:44A-20.5 FOR THE AWARD OF CONTRACTS IN
EXCESS OF \$17,500.00

WHEREAS, large contributions from those seeking or performing contracts with a municipality, raise reasonable concerns on the part of taxpayers and residents as to their trust in government and its business practice; and

WHEREAS, pursuant to N.J.S.A. 40:48-2, a municipality is authorized to adopt such ordinances, regulations, rules and by-laws as necessary and proper for good government, as well as the public health, safety and welfare; and

WHEREAS, pursuant to P.L. 2005, c.271 (codified at N.J.S.A. 40:11A-51) a municipality is authorized to adopt by ordinance measures limiting the awarding of public contracts to business entities that have made political contributions and limiting the contributions that the recipient of such a contract can make during the term of a contract; and

WHEREAS, in the interest of good government, the people and the government of the City of Trenton desire to establish a policy that will avoid the perception of improper influence in public contracting and local elections; and

NOW, THEREFORE, BE IT RESOLVED, it shall be the policy of the City of Trenton to create a such a regulation which states that a business entity which makes political contributions to municipal candidates and municipal and county political parties in excess of certain thresholds shall be limited in its ability to receive public contracts from the City of Trenton; and

BE IT ORDAINED by the City of Trenton, in the County of Mercer, and the State of New Jersey, as follows:

ORDINANCE

SECTION 1 - PROHIBITION ON AWARDING PUBLIC CONTRACTS TO CERTAIN CONTRIBUTORS

- (a) To the extent that it is not inconsistent with state or federal law, the City of Trenton and any of its departments, instrumentalities or purchasing agents shall not enter into any agreement or otherwise contract to procure "professional services" as such term is such term is used at N.J.S.A. 40:11A-5(1)(a)(i) and/or banking, insurance or other consulting service (hereinafter "professional services") from any professional business entity if such professional business entity has solicited or made any contribution (as such term is defined at N.J.A.C. 19:25.1.7, which definition includes loans, pledges and in-kind contributions) (hereinafter "contribution"), to (i) a candidate or joint candidates committee of any candidate for elective municipal office in Trenton or a holder of public office having ultimate responsibility for the award of a contract, or (ii) to any Trenton or Mercer County political party committee, or (iii) to any political action committee that regularly engages in the support of Trenton municipal or Mercer county elections and/or Trenton municipal or Mercer county political parties or Trenton municipal or Mercer County political party committees, (hereinafter "PAC"), in excess of the thresholds specified in subsection (d) within one calendar year immediately preceding the date of the contract or agreement.
- (b) No professional business entity who submits a proposal for, enters into negotiations for, or agrees to any contract or agreement with the City of Trenton or any of its departments or instrumentalities, for the rendition of professional services shall knowingly solicit or make any contribution, to: (i) a candidate or joint candidates committee of any candidate for elective municipal office in Trenton or holder of public office having ultimate responsibility for the award of a contract, or (ii) to any Trenton or Mercer County political party committee, or (iii) to any political action committee ("PAC") that regularly engages in the support of Trenton municipal or Mercer County elections and/or Trenton municipal or Mercer County political parties or Trenton municipal or Mercer County political party committees, between the time of first communication between that professional business entity and the municipality regarding a specific agreement for professional services and the later of the termination of negotiations or rejection of any proposal, or the completion of the performance of that contract or agreement.

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- (c) For purposes of this Ordinance, a "professional business entity" whose contributions are regulated by sections (a) and (b) hereof means: (i) an individual including the individual's spouse, and any child/children living at home; (ii) a firm; corporation; professional corporation; partnership; limited liability company; organization; association; and any other manner and kind of business entity; (c) any person who owns 10% or more of the equity or ownership or income interests in a person or entity as defined in sections (i) and (ii) above and their spouses and child/children living at home; (d) all partners or officers of such entity, in the aggregate, and their spouses and child/children living at home; and (e) all persons who are an "affiliate" of a person as defined in sections (i) and (ii) above such term is used in 11 U.S.C § 101(2).
- (d) The monetary thresholds of this Ordinance are: (i) a maximum of \$300 each for any purpose to any candidate for mayor or governing body, or \$300 to a political party committee of the City of Trenton; (ii) \$500 to a Mercer County political party committee or to any PAC. However, any group of persons meeting the definition provided in section (c) above of "professional business entity" may not annually contribute for any purpose in excess of \$2,500 to all City of Trenton candidates and officeholders with ultimate responsibility for the award of the contract and all City of Trenton or Mercer County political party committees and PACs combined, without violating subsection (a) of this section.
- (e) For purposes of this section, the office that is considered to have ultimate responsibility for the award of the contract shall be:
 - (1) The City of Trenton Mayor or Governing Body, if the contract requires approval of appropriation from the Mayor or Governing Body.
 - (2) The Mayor of the City of Trenton, if the contract requires approval of the Mayor, or if a public officer who is responsible for the award of a contract is appointed by the Mayor.

SECTION 2 – CONTRIBUTIONS MADE PRIOR TO THE EFFECTIVE DATE

No contribution or solicitation of contributions made prior to the effective date of this Ordinance shall be deemed to give rise to a violation of this Ordinance.

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SECTION 3 – CONTRIBUTION STATEMENT BY PROFESSIONAL BUSINESS ENTITY

- (a) Prior to awarding any contract or agreement to procure professional services from any professional business entity the City of Trenton or its purchasing agents and departments, as the case may be, shall receive a sworn statement from the intended recipient of said contract that he/she/it has not made a contribution in violation of Section 1 of this Ordinance.
- (b) The recipient of said contract shall have a continuing duty to report any violations of this Ordinance that may occur during the negotiation, proposal process or duration of a contract's performance. The certification required under this subsection shall be made prior to entry into the contract or agreement with the City of Trenton, or prior to the provision of services or goods, as the case may be, and shall be in addition to any other certifications that may be required by any other provision of law.

SECTION 4 – RETURN OF EXCESS CONTRIBUTIONS

A recipient of a contract for professional services may cure a violation of Section 1 of this Ordinance, if, within 30 days after the general election which follows the date of the contribution, the contract recipient notifies the municipality in writing and seeks and received reimbursement of the contribution from the recipient of such excess contribution.

SECTION 5 – EXEMPTIONS

The contribution limitations prior to entering into a contract in Section 1(a) do not apply to contracts which (i) are awarded to the lowest responsible bidder after public advertising for bids and bidding therefore within the meaning of N.J.S.A. 40A:11-4, or (ii) are awarded in the case of emergency under N.J.S.A. 40A:11-6. There is no exemption for contracts awarded pursuant to a "Fair and Open Process" under N.J.S.A. 19:44A-20 et seq.

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SECTION 6 – PENALTY

- (a) It shall be a material breach of the terms of a City of Trenton agreement or contract for professional services when a recipient of such agreement or contract has: (i) made or solicited a contribution in violation of this Ordinance; (ii) knowingly concealed or misrepresented a contribution given or received; (iii) made or solicited contributions through intermediaries for the purpose of concealing or misrepresenting the source of the contribution; (iv) made or solicited any contribution on the condition or with the agreement that it will be re-contributed to a candidate or joint candidates committee of any candidate for elective municipal office in Trenton or any Trenton or Mercer County political part committee, or any PAC; (v) engaged or employed a lobbyist or consultant with the intent of understanding that such lobbyist or consultant would make or solicit any contribution, which if made or solicited by the professional business entity itself, would subject that entity to the restrictions of this Ordinance; (iv) funded contributions made by third parties, including consultants, attorneys, family members, and employees; (vii) engages in any exchange or contributions to circumvent the intent of this Ordinance; or (viii) directly or indirectly, through or by any other person or means, done any act which if done directly would subject that entity to the restrictions of this Ordinance.
- (b) Furthermore, any professional business entity that violates Section 6 (a) ii-viii shall be disqualified from eligibility for future City of Trenton contracts for a period of four calendar years from the date of the violation.

SECTION 7 – SEVERABILITY

If any provision of this Ordinance, or the application of any such provision to any person or circumstances, shall be held invalid, the remainder of this Ordinance to the extent it can be given effect, or the application of such provision to persons or circumstances other than those to which it is held invalid shall not be affected thereby, and to this extent the provisions of this Ordinance are severable. The drafters of this Ordinance, the persons signing the petition in support of this Ordinance, and the persons who cast votes in favor of the Ordinance, declare that they would have supported the Ordinance and each section, subsection, sentence, clause, phrase, or provision or application thereof, irrespective of the fact that any one or more other sections, subsections, sentences, clauses, phrases, or provisions or applications thereof may be held invalid.

ORDINANCE

SECTION 8 – REPEALER

All ordinances or parts of ordinances which are inconsistent with any provisions of this Ordinance are hereby repealed as to the extent of such inconsistencies.

SECTION 9 – EFFECTIVE DATE

This Ordinance shall become effective twenty (20) days following the earlier of (a) final adoption thereof by the Municipal Council of the City of Trenton or (b) the date on which the passage of this Ordinance as a public question is certified pursuant to N.J.S.A. 19:20-9 or other applicable law, and shall be published as required by law.

(This Ordinance was adopted by referendum vote of the voters of the City of Trenton at the General Election held on November 7, 2006.)

RECORD OF COUNCIL VOTE ON FINAL PASSAGE															
COUNCILMAN	AYE	NAY	N.V.	A.B.	COUNCILMAN	AYE	NAY	N.V.	A.B.	COUNCILMAN	AYE	NAY	N.V.	A.B.	
BETHEA					MELONE					PINTELLA					
COSTON					SEGURA					PRESIDENT					
LARTIGUE					STATON										
X—INDICATES VOTE				A.B.—ABSENT				N.V.—NOT VOTING				X.O.R.—INDICATES OVERRIDE VETO			

Adopted on first reading at a meeting of the City Council of the City of Trenton, NJ on _____

Adopted on second and final reading after hearing on _____

Rejected
Approved by _____
Mayor

Reconsidered
By Council _____

Override
Vote _____

☐

Aye

☐

Nay

President of Council

Joseph J. Edwards-Carter
City Clerk